


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part	Appeal Number:	2203558
Decision Date:	8/18/2022	Hearing Date:	06/15/2022
Hearing Officer:	Christine Therrien	Record Open to:	07/11/2022

Appearance for Appellant:

 - Representative
 - Attorney


Appearance for MassHealth/Optum:

Donna Burns, RN



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Approved in part	Issue:	PCA
Decision Date:	8/18/2022	Hearing Date:	06/15/2022
MassHealth/Optum Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Telephonic	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated 5/2/22, stating: “Your request for prior authorization for personal care attendant (PCA) services has been modified.” (Exhibit 1). The appellant filed this appeal timely on 5/10/22. (130 CMR 610.015(B); Exhibit 2). Denial of prior approval is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant’s request for PCA services.

Issue

The issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, 422.412, and 450.204, in modifying appellant’s prior authorization request for PCA services.

Summary of Evidence

The appellant’s attorney testified that he and the Optum representative came to an agreement that all the modifications will be restored except for the request under “other health care needs” for 60 minutes, once a day, for 3 days a week for a doctor ordered swimming program. The appellant’s representative testified that the appellant’s condition occurred in 2001 due to cardiac arrest. The

appellant's representative testified that the appellant has previously had time approved for swimming. The appellant's representative testified that the appellant began pool therapy in 2004 and the appellant can now tread water which is a heart health benefit. The appellant's representative testified that now the appellant attends "adult open swim" at the YMCA three days a week where he plays catch in the water which helps with stretching and hand-eye coordination. The appellant's representative testified that they tried to get the appellant to walk on a treadmill, but he was unable. The appellant's representative testified that the appellant's doctor ordered swimming to help keep him limber and mobile.

The Optum representative testified that the appellant requested 15 minutes, 2 times per day, 7 days a week for Passive Range of Motion (PROM) for all four extremities for a total of 2 hours per day which was approved. The Optum representative testified that what was approved in the past does not carry over. The Optum representative testified that the appellant was already approved for 2 hours a day for PROM and she questioned the medical necessity of swimming. The Optum representative questioned why the appellant needed PROM if he could tread water and grab a handrail.

The appellant's representative requested that she could submit a letter from the appellant's doctor who prescribed the swimming. The record was left open to allow the appellant's representative to submit such a letter.

The appellant's representative submitted a letter from the appellant's primary care physician that stated the appellant requires PROM to "keep his mobility and to prevent contractures. Additionally, given the history of cardiac arrest is[sic] important that he receives cardiovascular activity. For him swim therapy is essential as it gives some range of motion but also cardiovascular benefit. Other methods have been tried unsuccessfully." (Exhibit 5). The optum representative reviewed the letter and responded that she would uphold the modification for zero time for swimming because "PROM is approved for 2 hours per day which can be used for swimming on days he attends." (Exhibit 6).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. All the modifications will be restored except for the request under "other health care needs" for 60 minutes, once a day, for 3 days a week for a doctor ordered swimming program.
2. The appellant's condition occurred in 2001 due to cardiac arrest.
3. The appellant began pool therapy in 2004 and the appellant can now tread water.
4. The appellant attends "adult open swim" at the YMCA three days a week where he plays catch in the water and treads water.
5. The appellant requested 15 minutes, 2 times per day, 7 days a week for PROM for all four extremities for a total of 2 hours per day which was approved.
6. The record was left open to allow the appellant's representative to submit a letter from the

appellant's doctor.

7. The appellant's representative submitted a letter from the appellants primary care physician that stated the appellant requires PROM to "keep his mobility and to prevent contractures. Additionally, given the history of cardiac arrest is[sic] important that he receives cardiovascular activity. For him swim therapy is essential as it gives some range of motion but also cardiovascular benefit. Other methods have been tried unsuccessfully." (Exhibit 5).
8. The optum representative reviewed the letter and responded that she would uphold the modification for zero time for swimming because "PROM is approved for 2 hours per day which can be used for swimming on days he attends." (Exhibit 6).

Analysis and Conclusions of Law

This decision will address only the request for "other health care needs" as the other modification has been reinstated by MassHealth. This appeal is dismissed in part with regard to modifications to dressing, laundry and housekeeping.

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLS) (130 CMR 422.410(A)).

130 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLS). Activities of daily living include the following:

1. mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
2. assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
3. bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
4. dressing or undressing: physically assisting a member to dress or undress;
5. passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
6. eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
7. toileting: physically assisting a member with bowel and bladder needs.
8. When a member is living with family members, the family members will provide assistance with most IADLS. For example, routine laundry, housekeeping, shopping, and meal preparation and clean up should include those needs of the member.

9. When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
10. The MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs (See 130 CMR 422.410).

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

1. household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
2. meal preparation and clean-up: physically assisting a member to prepare meals;
3. transportation: accompanying the member to medical providers; and
4. special needs: assisting the member with:
 - a. the care and maintenance of wheelchairs and adaptive devices;
 - b. completing the paperwork required for receiving personal care services; and
 - c. other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is “medically necessary” if:

1. it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
2. there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(130 CMR 450.204).

The appellant suffered cardiac arrest which precipitated his current condition. The doctor’s note stated that swimming is good for the appellant’s cardiovascular health. The appellant’s representative testified

that swimming is the only physical activity the appellant has been able to undertake. The PCA program is designed for people who need hands on physical assistance with ADLs and IADLs. Tending to one's cardiovascular health may fall under 130 CMR 422.410(B)(4)(c) and would be deemed medically necessary as "it is reasonably calculated to prevent...worsening of his condition" and there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth." (130 CMR 450.204(a)). The appellant's representative testified that the appellant swims during "open adult swim" at the YMCA. The request for time for swimming is the least costly alternative available to the appellant given that the appellant is unable to undertake other physical activities and swimming during "open swim" at the YMCA only requires the PCA to provide transportation and hands on physical assistance with dressing/undressing, transfers, and toileting. The appellant has already been approved for time for dressing/undressing, transfers, and toileting so the request for "special health care" will be reduced by the amount of time already allotted for each of these ADLs. Dressing: 15 minutes, 3 times for *45 minutes*; undressing: 10 minutes, 3 times for *30 minutes*; bladder care: 5 minutes, 3 times for *15 minutes*; transfers: 2 minutes, 6 times for *12 minutes* for a total reduction of 102 minutes from the requested 180 minutes. The appellant's request for time for "other health care needs" will be approved for 30 minutes, 3 times a week.¹

Order for MassHealth

Approve 30 minutes, 3 times a week for "other health care needs."

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

¹ The precise calculation is 78 minutes per week or 26 minutes, 3 times a week, but MassHealth rounds up to the closest quarter hour.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215.

[REDACTED]